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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Appellant,

v.

DEANDRE LEE CARLIE,

Defendant and Respondent.

F062650

(Super. Ct. No. 1419169)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Valli Katrina Israels, Judge.

Birgit Fladager, District Attorney, and Anthony M. Colacito, Deputy District Attorney, for Plaintiff and Appellant.

George Bond and Joanne M. Kirchner, under appointment by the Court of Appeal, for Defendant and Respondent.

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After a magistrate dismissed a complaint charging Deandre Lee Carlie with burglary, the prosecutor filed a motion in superior court to reinstate the complaint. The superior court denied the motion. The prosecutor appealed. We affirm.

BACKGROUND

On June 17, 2010, a complaint was filed alleging that Carlie committed a first degree burglary on December 4, 2009. (Pen. Code, § 459.)¹ After a two-day preliminary hearing, the magistrate dismissed the complaint on March 24, 2011. (§ 871.)² On April 7, 2011, the prosecutor filed a motion to reinstate the complaint. (§ 871.5.) On April 15, 2011, Carlie's attorney filed an opposition to the motion. After a hearing, the superior court denied the motion on May 16, 2011. The prosecutor appealed the superior court's order denying the motion. (§§ 871.5, subd. (f), 1238, subd. (a)(9).)

DISCUSSION

On the premise that the evidence at the preliminary hearing provided reasonable cause to believe Carlie was guilty of burglary, the prosecutor argues that the magistrate's ruling dismissing the complaint was erroneous. The prosecutor characterizes fingerprints as the "strongest evidence of identity," insists that "the elements of the crime were met," and argues that the superior court's denial of the motion to reinstate the complaint "erroneously described the magistrate's comments as factual findings." Carlie argues that the superior court made factual findings that were supported by substantial evidence and that were binding on the superior court and asks us to affirm the superior court's ruling. We agree with Carlie.

¹ Later statutory references are to the Penal Code.

² Section 871 reads, "If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate shall order the complaint dismissed and the defendant to be discharged, by an indorsement [*sic*] on the depositions and statement, signed by the magistrate, to the following effect: 'There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order that the complaint be dismissed and that he or she shall be discharged.'"

Three witnesses testified at the preliminary hearing.³ The first witness, a police officer, spoke with a woman whose apartment was burglarized on December 4, 2009. She left her apartment at about 11:30 that morning and returned about 45 minutes later to find some gaming consoles, controls, and games missing. A window was broken and the metal blinds over the window were bent. The officer spoke with a neighbor who said she looked through her dining room window at about 11:30 that morning to see a “black male adult” walking “towards the victim’s residence.” Over three months later, the neighbor looked at a six-pack photo lineup and told the officer it was “possible” that Carlie was the person she saw. “This person stands out most,” she said. She told the officer he had similar features to her brother but with a darker complexion.

The second witness, a police community service officer, had attended over 200 hours of crime scene and latent print classes, including three 40-hour classes in latent prints, and had lifted hundreds of latent prints over the past 13 years. From an apartment window, she lifted some latent prints, all of which were “somewhat smudged,” all of which had “some distortion.” She talked with the neighbor, who described the black male she saw as “between 18 and 25 wearing a black beanie, all black clothing, black backpack,” “thin” in build, “5-5” in height, and “120” in weight.⁴ She said a lot of people use the path where he was walking as a shortcut.

The third witness, another police community service officer, had attended over 200 hours of crime scene and latent print classes, including one 40-hour class on dusting for and lifting of latents, another 40-hour class on comparison of latents, and 30 hours of additional training on computer use to analyze prints. In her eight years as a community service officer she had taken fingerprints over 100 times and had analyzed and compared one set of prints to another over 500 times. She was a member of, though not certified

³ The source of the facts is the preliminary hearing transcript.

⁴ Later, the parties stipulated that Carlie was six feet two inches tall.

by, the International Association for Identification. She took prints from Carlie at the courthouse and scanned those prints into the automated fingerprint identification system, which gave his name as third out of a total of 15 results. Common protocol is to compare the top five results, but she admitted deviating from that practice by pulling only Carlie's prints for comparison since his prints "looked similar." She testified that his left middle finger matched a single latent print of moderate clarity that she lifted from the crime scene. She disagreed with the opinion of the other community service officer about the distortion of the prints lifted at the crime scene and characterized the latent print that she matched to Carlie's left middle finger as "a very good print." Although a sheriff's office employee who knew beforehand of her positive identification verified her results, the community service officer acknowledged that someone who does not know the outcome should conduct the independent verification. She acknowledged, too, that "there are specific points that you're trained to look for" but the "ones you choose are your choice." She acknowledged that she kept no record of the points of similarity she chose, no record of the 10 points she first identified as similar, and no record of the 13 points she later identified as similar. Fingerprints are unique to the individual, but she acknowledged that prints from different people are not always sufficiently different not to be confused. Other prints lifted at the crime scene had characteristics similar to Carlie's, but no others had sufficient points to make a verifiable match.

On that record, the magistrate made findings of fact. The magistrate found that the neighbor's description of the person she saw on the day of the burglary was "insufficient" and not "a compelling identification, even for probable cause." The magistrate found that all of the prints lifted at the crime scene were "somewhat distorted." The magistrate found that the community service officer who compared the prints admitted deciding that "a single fingerprint" was sufficient so she "didn't investigate the fact that there were 15 hits with that one fingerprint." The magistrate found "there's not sufficient cause, based on the evidence in the courtroom presented in the case, that a person of ordinary caution

or prudence would believe and conscientiously entertain a strong suspicion of the guilt of the accused; meaning there's insufficient evidence of what – by what's been presented.” Addressing Carlie, the magistrate ruled, “I’m going to find insufficient evidence to hold you to answer and dismiss this.”

At the hearing on the motion to reinstate the complaint, the prosecutor contended the magistrate did not “make any factual finding that were [*sic*] adverse to the finding in regard to the I.D. tech qualification in making a comparison of that print lifted from the crime scene to those rolled in court” but instead merely “expressed some displeasure” about the identification. Carlie’s attorney argued that the magistrate found that prints lifted at the crime scene were “somewhat distorted” and credited the testimony of the community service officer who lifted the prints over that of the community service officer who took Carlie’s prints in court and then compared those with the prints lifted at the crime scene. The superior court noted that “protocol” for comparing in the automated fingerprint identification system the prints lifted at the crime scene with the prints taken in court “would require that [the community service officer] take the other two names that were in the top five as well” rather than just the top three, as she admitted she did.

Ruling on the motion, the superior court found preliminarily that the magistrate made factual findings at the preliminary hearing. Reviewing those findings, the superior court observed, first, that the magistrate found that the neighbor’s identification of the person in one of the photos from the six-pack, three months after the burglary, as that of the person who “stands out the most,” combined with the neighbor’s “original description of the defendant as a small and thin African-American male,” was “not a sufficient identification” of Carlie as the perpetrator. The superior court observed, second, that the magistrate made a record of the distortion of the prints lifted at the crime scene and of multiple violations of normal protocol by the community service officer who compared those with the prints lifted in court and, on that basis, found that “the fingerprint

identification of the defendant was insufficient.” The superior court denied the prosecutor’s motion to reinstate the complaint.

On that record, we turn to the law. The role of the magistrate is to determine whether or not there is “sufficient cause” to believe a defendant guilty of a public offense. (*People v. Uhlemann* (1973) 9 Cal.3d 662, 667 (*Uhlemann*), citing §§ 871, 872.) The term “sufficient cause” is generally equivalent to “reasonable and probable cause,” that is, such a state of facts as would lead a person “of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion” of the accused’s guilt. (*Uhlemann, supra*, at p. 667.) Within the framework of that limited role, the magistrate may weigh the evidence, resolve conflicts, and give or withhold credence to particular witnesses. (*Ibid.*)

Our duty on review of the superior court’s denial of the prosecutor’s motion to reinstate the complaint is to disregard the ruling on the motion and to examine directly the magistrate’s decision to dismiss at the preliminary hearing. (*People v. Plumlee* (2008) 166 Cal.App.4th 935, 938-939.) Although we review the magistrate’s legal conclusions de novo, we are bound by the magistrate’s factual findings that are supported by substantial evidence. (*Id.* at p. 939.) The identity of the perpetrator of a burglary is a question of fact. (See, e.g., *People v. Hinson* (1969) 269 Cal.App.2d 573, 578.) Here, after weighing the evidence, resolving conflicts in the evidence, and giving credence to one witness while withholding credence from another witness, the magistrate made factual findings that are supported by substantial evidence. (*Uhlemann, supra*, 9 Cal.3d at p. 667.) On that record, our duty is to affirm. (*Plumlee, supra*, at p. 939.)

DISPOSITION

The judgment (order denying the motion to reinstate the complaint) is affirmed.

Gomes, J.

WE CONCUR:

Wiseman, Acting P.J.

Levy, J.